IN THE

Supreme Court of the United States

October Term, 1971.

No. 71-5118.

GEORGE H. HOHLWEILER, ESQUIRE, Administrator of the Estate of ELFORD W. RICHARDSON, Deceased,
Petitioner,

v.

PENN-CENTRAL TRANSPORTATION COMPANY

and

THE BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

ROBERT M. LANDIS,
1600 Three Penn Center Plaza,
Philadelphia, Pa. 19102
Attorney for Respondent, Penn-Central Transportation Company.

Of Counsel:
DECHERT, PRICE & RHOADS.

International, 711 So. 50th St., Phila., Pa. 19143—Tel. SA 7-8711 Area Code 215

QUESTIONS PRESENTED.

1. Should this Court grant certiorari to review the trial court's extensive findings of fact and conclusions of law in favor of respondents under well settled principles of law, after a trial without a jury?

2. Did not the trial court properly conclude that petitioner's claim under the Federal Employers' Liability Act was barred by a valid and binding release and that petitioner had failed to prove his charges of fraud, conspiracy, and discrimination under the Railway Labor Act?

STATEMENT OF THE CASE.

This case was tried before District Judge A. Leon Higginbotham sitting without a jury in the United States District Court for the Eastern District of Pennsylvania. On January 23, 1969, Judge Higginbotham issued a fourteen-page opinion, setting forth extensive findings of fact and conclusions of law, entering judgment in favor of both defendants. In its opinion, the court held, consistent with the principles enunciated in *Callen v. Pennsylvania Railroad Company*, 332 U. S. 625 (1948), that plaintiff failed to sustain his burden of proving the invalidity of a settlement agreement with the Railroad (A. 10, 15-16). Plaintiff's claims of fraud, conspiracy, and discrimination under the Railway Labor Act were likewise held to be unsupported by the evidence (A. 14-15).

On February 16, 1971, the United States Court of Appeals for the Third Circuit affirmed the judgment of the District Court per curiam.

ARGUMENT.

The Petition Raises No Question Which Merits Review by This Court.

This case does not justify the grant of a writ of certiorari, *Supreme Court Rule 19(b)*. This is a case in which a plaintiff simply failed to sustain his burden of proof in setting aside a valid and binding release and failed to prove his charges of fraud, conspiracy, and discrimination under the Railway Labor Act. Petitioner's appeal was fully considered by an able Court of Appeals and resolved against him. That court, upon reviewing the record, concluded that the trial court "made extensive findings of fact which amply support this judgment." Its judgment need not and should not be reviewed by this court.

Having failed to satisfy either of the courts below, petitioner now claims that this Court should exercise its discretionary certiorari jurisdiction because the decision of the Court of Appeals conflicts with the recent decision of this Court in *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation et al.*, 39 U. S. L. Wk. 4506 (1971). There is no conflict. The holding below was in no sense contrary to or in conflict with this Court's decision in *Blonder-Tongue*, in which the mutuality of estoppel doctrine was held applicable to the particular facts of a patent infringement case. The mutuality of estoppel doctrine is inapplicable to this case because the causes of action and issues which were fully tried in this case had never been previously litigated.

The weakness of petitioner's case is further demonstrated by his gratuitous and vindictive attack upon the integrity of the courts below. Utterly unsupported by any vestige of fact, it deserves the scorn of silent rejection reserved for unsuccessful claimants and their frustrated advocates.

CONCLUSION.

For the foregoing reasons the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

ROBERT M. LANDIS,
Attorney for Respondent,
Penn-Central Transportation Company.

Of Counsel:
DECHERT, PRICE & RHOADS.

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IN THE

Supreme Court of the United States

October Term, 1971

~~No. 71-5188~~

GEORGE H. HOHLWEILER, ESQ., Admr. of the Estate of E. W. Richardson, Deceased,
Petitioner

vs.

PENNSYLVANIA RAILROAD

and

THE BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES,
Respondent

BRIEF FOR THE BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES,
RESPONDENT

In Opposition to Grant of a Writ of Certiorari

ALLEN S. OLMSTED, 2ND
2301 Packard Building
Philadelphia, Pa. 19102

PRESS OF ALLEN, LANE & SCOTT, PHILADELPHIA

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In Opposition to Grant of a Writ of Certiorari

STATEMENT OF THE CASE

The facts are fully and accurately set out in Judge Higginbotham's Opinion (A3-17).

The gist of the case against this respondent (the union) is that a minor free-wheeling officer of the union* counseled the plaintiff, an injured Railroad employee

* The union officer who negotiated for the plaintiff was a fellow-worker, a member (not chairman) of the Lodge Protective Committee; no higher officer of the union had anything to do with the settlement.

named Richardson, to discharge his attorney and then helped him settle his case with the Railroad. The settlement figure is alleged to be inadequate. The union officer is alleged to have promised the employee a light duty job; whereas the job he did get was a heavy duty job—the same job he had before the accident.

The discharged attorney, Lawrence J. Richette, Esquire, sued the railroad, the union and two members of the Protective Committee for tortious interference with his contract. *Richette* v. *Penna. R.R. et al,* 410 Pa. 6, 187 A 2d 910. He recovered a verdict. He contended in the lower court, and contends here, that the verdict in *Richette* is res judicata and establishes that the union was guilty of hostile discrimination under the rule of *Steele* v. *L & N Ry.* 323 U. S. 192.

ARGUMENT

Res Judicata

As to defendant Brotherhood of Railway and Steamship Clerks, the only ground of jurisdiction and the only issue is alleged hostile discrimination under the *Steele* doctrine. This issue was not involved in *Richette,* as is clearly admitted at page 7 of the Petition for Certiorari. Therefore *Richette* is not res judicata as to this issue and this defendant.

Attack on Integrity of the Court

The real burden of the Petition is an attack on the integrity of the Court of Appeals, (especially on that of Judge Hastie), in that nine judges refused to disqualify themselves. The Petition for Certiorari asks this Court "to set the house in order in the Third Circuit Court of Appeals," contending that the refusal of the judges to recuse involves "the very integrity of the judicial process." (Petition pp 17-18).

The request to disqualify first appears in a private letter to Judge Hastie (no copies to opposing counsel) (A-43). It was repeated in letters to the Court of Appeals (A-45) and to Mr. Justice Brennan (A-55) and in a Petition to Disqualify (A-47). The petition lists nine judges who, it is asserted "have since 1957, consistently ruled against members of the Class in which Elford Richardson, the deceased whom the appellant represents, is a member." Counsel stated that he "does not believe that this is a coincidence" (A-47).

The case involving the Brotherhood of Railway and Steamship Clerks are:

Powell v. *Pennsylvania Railroad*

258 F 2nd 267 (Judges Goodrich, Staley, Hastie)
267 F 2nd 241 (Judges Kalodner, Hastie, Egan)

Gainey v. *Brotherhood, etc.* and *Penna. R.R.*

275 F 2nd 342 (Judges Goodrich, McLaughlin, Kalodner)
303 F 2nd 716 (Judges Hastie, Forman, Smith)
313 F 2nd 318 (Judges McLaughlin, Hastie, Dumbauld)
406 F 2nd 744 (Judges McLaughlin, Staley, VanDusen)

The case at bar was heard by Judges Hastie, Aldisert and Gibbons. The petition for rehearing was dismissed by Judges Hastie, Van Dusen, Aldisert, Gibbons and Rosenn.

Four of the nine judges sought to be disqualified (Judges Aldisert, Gibbons, Ganey and Freedman) sat in none of these cases.

The Powell cases involved a large number of Pennsylvania Railroad employees in Philadelphia; Richardson may have been one of these. If so, he won an award. Mr. Richette as counsel won a substantial fee.

The Gainey cases involved a group of railroad employees known as talleymen; Mr. Richardson was not a

talleyman. The second of the cases listed (303 F 2nd 716) was decided in favor of the Class Mr. Richette represented. In the third (313 F 2nd 318) Judge Hastie dissented.

Thus it appears that Mr. Richette has been too modest in enumerating his successes in his litigation against the Brotherhood; Judge Hastie has decided three of four cases in Mr. Richette's favor.

Quite aside from the factual inaccuracy of the averment concerning the previous litigation involving Mr. Richette (but not his client) are the totally unwarranted reflections on the integrity of the Court. Mr. Richette asked Judge Hastie for a panel "who have no interest in the Pennsylvania Railroad and its lobbyist" (A-42). In his petition for certiorari he refers to the "powerful" law firms who represent the defendants and to a statement of counsel alleged to have been made in a previous litigation that he would "straighten it (the appeal) out up there too" (Petition p. 8). Counsel says he fears that a "union lobbyist would approach the Court with the object of influencing its decision" (p. 9). If these statements do not imply some corruption or other impropriety they are entirely irrelevant to this case.

We submit that this attack on the integrity of the Court is scandalous, without basis in fact and so outrageous as to demand its withdrawal by counsel.

Respectfully submitted,

ALLEN S. OLMSTED, 2ND
Attorney for Respondent
Brotherhood of Railway and
Steamship Clerks